Shellfish Management

Introduction

Shellfish have been a mainstay of western Washington Indian tribes for thousands of years. Clams, crab, oysters, shrimp, and many other species were readily available for harvest year-round. Because large amounts could be harvested, cured, and stored for later consumption with relative ease, shellfish were an important source of nutrition for tribes.

Shellfish remain important for economic, subsistence, and ceremonial purposes. The rapid decline of many western Washington salmon stocks, due in large part to habitat loss from the region's burgeoning human population, has pushed shellfish to the forefront of many tribal economies.

The tribes have two distinct types of shellfish harvests – commercial and ceremonial/subsistence. Shellfish harvested during a commercial fishery are sold to licensed shellfish buyers who either sell shellfish directly to the public or to other commercial entities. Tribes collect taxes from tribal members who sell shellfish. Those taxes are used to help pay for tribal natural resource programs. Ceremonial and subsistence harvests of shellfish, which have a central role in tribal gatherings and daily nutrition, are intended for tribal use only.

Tribal Treaty Shellfish Rights

As with salmon, the right to harvest shellfish lies within a series of treaties signed with representatives of the federal government in the 1850s. Language pertaining to tribal shellfish harvesting is as follows:

"The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians, in common with all citizens of the United States; and of erecting temporary houses for the purposes of curing; together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. Provided, however, that they shall not take shell-fish from any beds staked or cultivated by citizens."

– Treaty of Point No Point
Jan. 26, 1855

A Skokomish tribal shellfish harvester picks oysters on a beach along Hood Canal.

In exchange for the peaceful relinquishment of what is today most of western Washington, the tribes reserved the right to continue to harvest fish and shellfish from all of their usual and accustomed harvest areas. The tribes were specifically excluded from harvesting shellfish from areas "staked or cultivated" by non-Indian citizens.

Clamming was dominated by the tribes well into the1920s, but as tideland continued to be purchased by non-Indians, tribes were slowly excluded from their traditional shellfish harvest areas. Tribal legal efforts to uphold the federal government's treaty promises began in the early 1900s. The U.S. Supreme Court ruled in *U.S. vs. Winans* that when a treaty reserves the right to fish at all usual and accustomed places, the state may not preclude access to those places.

In 1974, U.S. District Court Judge George Boldt ruled the tribes had reserved the right to harvest half of the harvestable salmon and steelhead in western Washington. Through the "Boldt Decision," upheld by the U.S. Supreme Court in 1979, tribal and state fisheries staff have worked together to develop fisheries regimes to ensure harvest opportunities for Indians and non-Indians alike. This new atmosphere of cooperative natural resources management gave the tribes hope that their treaty-reserved rights to shellfish harvest and management could be restored. Talks between the tribes and the state began in the mid-1980s, but were unsuccessful. In 1989, the tribes were forced to file suit in federal court to have their treaty shellfish harvest rights recognized. Years of negotiations were unsuccessful, and the issue went to trial in May 1994.

The Rafeedie Decision & Implementation Plan

After hearing testimony from tribal elders, biologists, historians, treaty experts, as well as testimony from private property owners and non-Indian commercial shellfish growers, Federal District Court Judge Edward Rafeedie followed in the footsteps of the Boldt Decision. He ruled the treaties' "in common" language meant that the tribes had reserved harvest rights to half of all shellfish from all of the usual and accustomed places, except those places "staked or cultivated" by citizens – or those that were specifically set aside for non-Indian shellfish cultivation purposes. "A treaty is not a grant of rights to the Indians, but a grant of rights from them," Rafeedie wrote in his December, 1994 decision, adding that the United States government made a solemn promise to the tribes in the treaties that they would have a permanent right to fish as they had always done. Rafeedie ruled all public and private tidelands within the case area are subject to treaty harvest, except for shellfish contained in artificially created beds. His decision requires tribes planning to harvest shellfish from private beaches to follow many time, place, and manner restrictions on harvest.

Since the U.S. Supreme Court's final refusal in 1999 to hear the case, several parties, including the tribes and shellfish growers, have been working on an implementation plan under the guidance of Seattle Federal Court Judge Robert Lasnik. Under the implementation plan, each party would have a clear and working understanding of the Rafeedie Decision and how it affects their everyday operations. The tribes have moved past litigation and into cooperative co-management of their treaty-reserved resources with the State of Washington. Tribal shellfish managers have developed harvest management and supplementation plans, and harvest data is collected and shared with other tribes and the state. Examples of cooperation can be found throughout the Puget Sound and coastal region.

FY 05 Tribal Shellfish Management Activities

Preliminary data for 2004, the most recent available, indicate that treaty tribes in western Washington harvested approximately 794,500 pounds of manila and native littleneck clams; 4.4 million pounds of geoduck clams; 278,000 pounds of oysters; 14.4 million pounds of crab; and 342,000 pounds of shrimp. These fisheries occur throughout Washington coastal areas and Puget Sound.

The tribes and state have entered into 27 different regional management plans for a variety of shellfish species. Each species has unique management requirements to ensure biologically sound harvests occur. Following are several examples of treaty tribal shellfish management activities during FY 05:

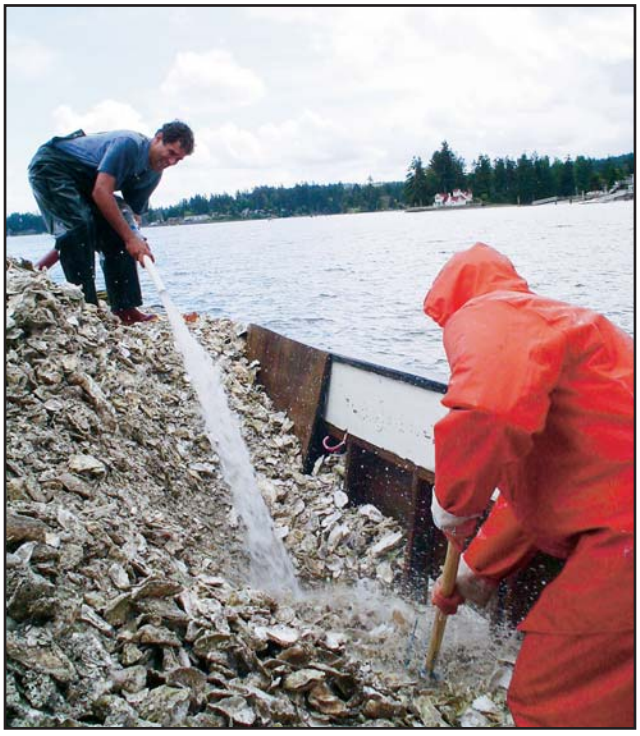
Suquamish Tribe Works To Restore Rare Oyster

Standing next to a mound of oyster shells on the bow of the Suquamish Tribe's barge, Paul Williams arms himself with a fire hose and gives his shipmate the go-ahead.

"Alright, turn it on!" yells Williams. A generator roars to life and out sprays a stream of water from the hose. Williams, the shellfish program manager for the Suquamish Tribe, aims the powerful stream at the hill of shells and blows them into the waters of Liberty Bay near Poulsbo. If all goes according to plan, those shells will soon be covered with maturing Olympia oysters, the highly savored and nearly extinct oyster of Puget Sound.

"We chose a site in the bay where a small population of Olympia oysters still exists, and it is our hope that their offspring will attach themselves to this layer of shells and begin to repopulate the area," Williams said.

About 5,000 square feet of state-owned tidelands was covered with 100 cubic yards – or about 10 dump truck loads – of Pacific oyster shell. It took the tribe, The Hood Canal Oyster Company and the Puget Sound Restoration Fund, the project's coordinator, two days to unload all the shell in the bay. The state Department of Fish and Wildlife also helped with the project.



Paul Williams, shellfish program manager for the Suquamish Tribe, blasts oyster shells into Liberty Bay.

The Olympia oyster, the only native oyster to western Washington, is small compared to the Pacific oyster. An average Olympia oyster is only 2-inches wide and two-inches long, whereas a Pacific is about double that size. What it lacks in size, however, it makes up in taste; the Olympia oyster is considered a delicacy throughout the world.

Consumer demand for the Olympia oyster, along with water pollution and over-harvest, has taken a toll on the shellfish. In the mid-1800s, a voracious appetite throughout the West for the shellfish was so great that the population was nearly harvested to extinction.

Demand was only part of the problem, however. Industries, such as pulp and paper mills, spilled chemicals into nearby waterways, polluting Olympia oyster beds and decimating the resource.

"I'm optimistic that with more restoration projects we can bring back an Olympia oyster population that can support tribal and non-tribal harvests in the future," Williams said. "This is a treasured resource that needs our help and deserves our attention."

Quinault Nation Donates Clams For Sport Harvest

An estimated 12,000 non-tribal recreational razor clam harvesters were on Copalis Beach north of Ocean Shores in early May thanks to a gift of 180,000 clams from the Quinault Indian Nation. "The Ocean Shores community and surrounding area were very appreciative," said Ed Johnstone, fisheries policy spokesperson for Quinault Indian Nation (QIN). "For centuries, we've always protected and shared this resource."

Recreational shellfish harvesters flood Copalis Beach on the Washington coast to harvest 180,000 razor clams donated by the Quinault Indian Nation.

Because tribal estimates found that surplus clams would exist this year, the nation offered to allow recreational diggers access to some of their share. "We were only able to include Copalis Beach in the two-day May opening because the Quinault Indian Nation generously agreed to transfer 180,000 clams from their share of the harvest to the non-tribal share," said Dan Ayres, coastal shellfish manager for the Washington Department of Fish and Wildlife. The QIN and the state work together to assess the clam populations on off-reservation beaches and develop harvest limits based on the available percentage of clams.

A weekend of non-tribal recreational clamming is big business for hotels, gas stations and restaurants in the Ocean Shores area. Business doubles at Anthony's Home Port Restaurant in Ocean Shores during a razor clam opening with nice weather, managers said. The numbers of cars entering Ocean Shores was up an average of 9 percent over this time last year mostly thanks to better weather and clam openers. More than 368,000 visitors passed through Ocean Shores in May according to Ken Mercer, director of tourism and business development for Ocean Shores.